IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos. 15807 and 15808 of 2003

with

SPECIAL CIVIL APPLICATION Nos. 4776, 5641, 5770 of 2004

Date of Decision: -05-2005

RUKHIBEN RUPABHAI
Versus
UNION OF INDIA

[For Full Title see Page 2]

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the appellants:

MR PH PATHAK

For the Respondents:

MR RM VIN
MR MUKESH A PATEL
MR NS SHEVADE
MS MEGHA JANI

PER: BHAWANI SINGH, CHIEF JUSTICE (C.A.V):-

1. This group of five cases (S.C.A.No.15807/03 :

Whether Reporters of Local Papers may be allowed to see the Judgment?
Smt.Rukhiben Rupabhai, widow of Rupabhai Megabhai vs. Union of India & Ors., S.C.A.No.4776/04 :Mrs.Valliamma Armugam, widow of Kalian Muthuswamy vs.Union of India & Ors., S.C.A.No.5641/04 :Smt.Sakudi B.Damor, widow of Bhikhabhai Virsinh vs.Union of India & Ors., S.C.A.No.5770/04 :Smt.Puniben M.Mandora, widow of Mathurbhai Mandora vs.Union of India & Ors., S.C.A.No.15808/03 :Mrs.Chandra Muthuswamy, widow of Vishwalingam Chidambaram vs.Union of India & Ors.) is proposed to be decided by this judgment, since the question involved for consideration and determination is same, except slight variation in S.C.A.No.15808/03: Mrs.Chandra Muthuswamy, widow of Vishwalingam Chidambaram vs.Union of India & Ors., where employee was initially Casual Labourer for approximately ten years, thereafter appointed Substitute.

2. However, before dealing with the precise submissions advanced by the learned counsel for the respective parties, desirable it would be to make mention of material facts of these Petitions.

S.C.A.NO.15807/03:

3. Shri Rupabhai Megabhai (deceased) was in the service of respondents since 1976 to 1986. He died in harness leaving behind the widow and the children. The family has no other source of income. It was fully dependent on relatives. After the death of her husband, petitioner was not paid family pension, therefore, she approached the Central Administrative Tribunal (CAT), Ahmedabad Bench, through Original Application No.129 of 2002 stating that in the similar case of widow of Casual Labourer with temporary status, family pension had been granted by the Tribunal, the appeal (S.C.A.No.12456/03) against the said decision having been rejected by this Court, therefore, respondents be directed to grant her family pension on similar lines. CAT did not follow the precedent since this Court did not decide the S.C.A.No.12456/03 on merits. The husband of petitioner was granted temporary status. There was no justification for his non-absorption as permanent employee of the Railways. Temporary status employees are to be treated at par with the temporary employees of the Railways, therefore, they are entitled to same benefits, including

family pension.

4. Respondents state that husband of petitioner expired on 20-09-1986. Petitioner started the dispute in 2000, therefore, matter is belated. Competent authority passed the order dated 01-02-2002 after consideration of facts of the case in the context of Rules, Regulations and provisions of Indian Railway Establishment Manual (IREM), therefore, order of CAT dated 10-09-2003 in O.A.No.129/02 is just and proper requiring no interference, particularly in absence of patent irregularity or error apparent on the face of the record, as per Apex Court decision in Mohd.Yunus vs. Mohd.Mustaqim (AIR 1984 SC 38). There is no scope for judicial intervention in exercise of extraordinary jurisdiction under Article 226/227 of Constitution of India, otherwise, scheme was formulated and finalised as per Apex Court decision in Indrapal Yadav's case (1985(2) SCC 648). Scheme stipulates that project casual labourers are granted certain incentives/benefits with passage of time, but at no point of time, it was intended by the Railway Administration to treat those persons as permanent employees or members of regular staff. Dailywagers/project casual labourers were being given temporary status on completion of stipulated days and identified as project casual labourers with temporary status'. Such workers are extended the benefits like scale of pay, pass & PTO facilities, medical facilities, leave facilities. They are governed under DAR Rules. Such employees have to undergo the scrutiny process prescribed for treating them regular/permanent employees of the Railway Administration. On getting a temporary status, such employee becomes eligible for almost all the benefits available to the regular employees. Regular posting/appointment would depend upon availability of regular vacancy and eligibility of the candidate. The holding of temporary status in regular set up is a stage after undergoing the process of scrutiny of candidate and clearance of the test and before posting on a regular set up of vacancies. Therefore, the word "temporary servant" is having altogether a different meaning and status in Railway establishment than the common meaning of the word `temporary servant'. Even the word `project casual labourer with temporary status' and `temporary servant' are altogether different posts, unless and until such project casual labourers with temporary status undergo the scrutiny and test required for the purpose of discharging the work as `temporary railway servant'. Rule 75 of Railway Pension Rules, 1964, pertains to the Railway Pension Scheme for railway servants. The expression "railway servant" is used for granting family

pension. Rule 3(23) of the Railway Service Pension Rules, 1993, specifically exclude the project casual labourers from the meaning of railway servant. Para 1501 of IREM provides the meaning of temporary railway servant. It specifically excludes `project casual labourer with temporary status' and/or `project casual labourers', meaning thereby the persons who are `project casual labourers with temporary status' are not `temporary railway servants'. A combined reading of different provisions of Railway Pension Rules, Family Pension Rules and IREM, makes it clear that pensionary benefits are admissible to employees who are holding temporary status after undergoing all the formalities and requirements like scrutiny, test, etc. Such persons have to complete the period of qualifying service for getting pensionary benefits. Since the husband of the petitioner had the status of project casual labourer with temporary status, he did not fall within the meaning of temporary railway servant, therefore, not entitled to pensionary benefits. It is denied that late Shri Rupabhai Megabhai was serving with the respondents since 1972 to 1986 in the absence of specific evidence/details. Petitioner did not approach for grant of family pension earlier, she advanced the claim after family pension was granted to some other project casual labourers, without noticing the difference of facts. It is denied that the husband of the petitioner was granted temporary status as alleged. It is also denied that he was not absorbed as permanent employee of the railway without any justification. Assuming he was project casual labourer holding temporary status, he would not be eligible for benefit of family pension in terms of Rules 75, 104, 801, 3(23) read with clause 1501 of IREM, therefore, it is denied that temporary status employees are required to be treated at par with temporary employees of Railways. Ratio in Ram Kumar's case (1988(1) SCC 306) is that normally without undergoing the process of selection/scrutiny test, etc., benefit of pension (regularised employee) could not have been granted. In review decision in Ram Kumar's case (1996 (1) SLJ 116) the Apex Court considered change of factual aspects, but the law laid down and findings given on the points cannot be said to have been changed. It was a matter pertaining to decision taken by the Railway Board accepting the IVth Pay Commission Report providing for pension at the time of superannuation even to those who are temporary employees. Moreover, in Ram Kumar's case (1) and review petition in Ram Kumar's case (2), the point at issue was the entitlement of pension to "casual labourers" and not `family pension' of such casual labourers. The temporary employees defined under Rule 3(2)) of Pension Rules, 1993 read with para 1501 of IREM

do not include `project casual labourers with temporary status', like the petitioner's husband. The directions in the said case were pertaining to only those applicants considering the facts of the said persons only. `Substitutes' have altogether a different position in Railways. The nature of post is altogether different, therefore, the case of Prabhavatidevi (1996 AIR SCW 61) is of no help to the petitioner, therefore, wrong interpretation/meaning is taken of Apex Court decision in Ram Kumar's cases. Apex Court decision in Rabia Bikaner's case (AIR 1997 SC 2843) is relevant and binding, therefore, cannot be termed per incuriam. Facts in Mohan Lakha vs. Union of India (O.A.No.419 of 2000) decided on 31-07-2002 and Union of India vs. Mohan Lakha (S.C.A.No.6164 of 2003) rejected on 05-05-2003, against which Special Leave Petition filed by Union of India is dismissed on 19-01-2004, and other cases cited by the petitioner turn on different facts, therefore, it is denied that employees with temporary status are entitled to benefit of pension as alleged.

S.C.A.No.4776/04:-

5. Shri Kalian Muthuswamy (deceased) served the Railways from 1973 to 1988. He was employed casual labourer in 1973 on permanent nature of work. He was granted the benefit of temporary status from 01-01-1981. He died on 18-12-1988. Petitioner contends that Railways had no justification for not regularising the services of her husband though granted temporary status from 01-01-1981. CAT ignored the precedents and rejected the claim denying rightful claim of family pension to the petitioner. Temporary railway servants have been granted pension by the Railways accepting IVth Pay Commission Recommendations. Even otherwise, such employees are entitled to family pension under the Railway Rules and Regulations initially upheld by CAT and this Court holding that temporary status casual labourers are entitled to get pension and family pension, etc. CAT ought not to have taken a different view of the matter and followed the precedents. Ram Kumar's case (2) ought to have been followed by CAT, failure to do so amounts to disobedience of binding precedents and otherwise going against the provisions of IREM and order dated 15-04-1987 allowing pensionary benefits to temporary railway servants on acceptance of IVth Pay Commission Recommendations. Actions of respondents violate provisions of Articles 14, 21, 41/42 of the Constitution of India depriving the petitioner of family pension without justification, at this age and stage of life; respondents having utilised the services of her husband

for number of years without regularising the service, thereby committing serious acts of omission and commission. Turning back to the genuine and justifiable grievances of the petitioner by putting up defences giving different interpretations to Rules, Regulations and judicial decisions hardly behoves organisations like Railways, employing and keeping massive force.

6. Separate affidavit in defence has not been filed in this case, but this case is similar to S.C.A.No.15807/03 in which detailed reply has been filed.

S.C.A.No.5641/04:-

7. Shri Bhikhabhai Virsinh Damor (deceased) served the Railways from 1980 to 1997. He was employed as casual labourer in 1980 on permanent nature of work. He was granted temporary status from 01-01-1985. He died on 23-08-1997. Grievance of the petitioner is that Railways had no justification not to regularise the services of her husband though granted temporary status from 01-01-1985. CAT rejected her claim for family pension without justification without following precedents, Rules and Regulations of Railways like IREM, Order dated 15-04-1987 granting pension to temporary employees pursuant to acceptance of IVth Pay Commission Recommendations. The temporary status casual labourers are entitled to get pension and family pension, etc. like other temporary employees of Railways, otherwise allowed by judicial pronouncements. Husband of petitioner was not regularised by Railways, therefore, non-regularisation is an act of omission and commission on the part of the Railways, which cannot be allowed to raise the same. Other averments of petitioner are similar to petitioner in S.C.A.No.4776/04.

8. The respondents admit that Bhikhabhai Virsinh was casual Gangman. He was granted temporary status. He was employed in Railways on 28-04-1980, granted temporary status on 01-01-1984, however, he was not regularised till his death on 23-08-1997 due to non-availability of post in permanent cadre. Since the deceased employee was not a permanent employee of the Railways, the petitioner is not entitled to family pension. As per Pension Rules, terminal gratuity admissible under Rules has been paid. Petitioner is governed by by the Railway Service (Pension) Rules, 1993. Railway Board's Circular RBE 90/87 is with respect to Manual of Railway Pension Rules, 1950, while the petitioner is governed by Railway Service (Pension) Rules, 1993, therefore, this Circular is not applicable to this case. Ram Kumar's case (2) is not

applicable to this case, which is of casual labourer with temporary status. There is difference between `a temporary employee' and `a casual labourer with temporary status'. `Temporary railway servant' is defined in para 1501 of IREM (Vol.1), therefore, it is denied that the casual labourers with temporary status are entitled to pension/family pension. This apart, petitioner is not entitled to family pension, since the criteria prescribed in Rule 75 of the Railway Service (Pension) Rules, 1993, is not satisfied in this case. Consequently, all the claims advanced by the petitioner for claim of family pension have been repudiated.

9. Rejoinder of petitioner dated 03-09-2004 mentions that respondent had no justification for not absorbing her husband for fourteen years [L.Robert D'Sousa v. E.E., Southern Railway (AIR 1982 SC 854)]. CAT did not follow binding decisions nor Railway Rules, Regulations and Circulars extending benefits of pension to temporary employees. Ram Kumar's case (2) is applicable in this case, contention to the contrary is misconceived. There is no difference between temporary employees and casual labourers with temporary status with regard to benefit of pension, issue clearly clarified by Apex Court in Ram Kumar's case (2), otherwise, relevant Rules of Railways, provisions of IREM interpreted by the Court leave no manner of doubt about admissibility of family pension to the petitioner. CAT ought to have referred the matter to Larger Bench in case it intended to take a different view of the matter.

S.C.A.5770/04:-

10. Shri Mathurbhai Mandora (deceased) served Railways from 1980 to 1997. He was employed as casual labourer in 1980 on permanent nature of work. He was granted temporary status from 01-01-1985. He died on 23-08-1997. Grievance of the petitioner is that Railways had no justification not to regularise his services though granted temporary status from 01-01-1985. CAT passed the order ignoring binding precedents, IREM and Railway Board order dated 15-04-1987 allowing pensionary benefits to temporary employees pursuant to acceptance of recommendations of the IVth Pay Commission. Other contentions raised by the petitioner in this case are similar to the cases referred to hereinbefore.

11. Respondents submit that Mathurbhai Mandora was a casual Gangman. He was granted temporary status. He was employed by Railways on 13-09-1983, granted temporary status on 09-09-1984, however, he was not regularised

till his death on 23-08-1997. Since the deceased was not a permanent employee of the Railways, petitioner is not entitled to family pension, but terminal gratuity admissible as per Rules has been paid. Other averments in this reply are similar to reply in S.C.A.5641/04.

12. Rejoinder states that respondents have no justifiable reasons for not absorbing the husband of the petitioner for fourteen years [L.Robert D'Sousa v. E.E., Southern Railway (AIR 1981 SC 854)]. Through other averments, the case put up by respondents has been thoroughly repudiated and claim for grant of family pension asserted.

S.C.A.No.15808/03:-

13. Shri Vishwalingam Chidambaram (deceased) joined Railway service in 1979. He was engaged in open line, namely, maintenance work under CPWI, Rajkot. While in service, he expired on 02-06-1990 after putting more than 10 years service. He was treated `substitute' and granted temporary status. He was entitled to get temporary status after completion of 120 days of service. He was screened on 31-12-1986 for regular absorption. Against non-grant of family pension, CAT was approached through O.A.525/93, which disposed of the matter on 06-12-1995. Request for family pension has been rejected on the ground that casual labourer with temporary status is not entitled to the benefit of family pension. Again, O.A.No.422/96 was filed against denial of the claim. However, vide order dated 04-08-2000, CAT rejected the claim on the ground that husband of the petitioner rendered only two months' service after he was declared substitute. Review application, pointing out that similar claim had been allowed by Co-ordinate Bench, has been rejected permitting the petitioner to file representation for relaxation of Rules. Claim seems to have been rejected on the ground that husband of the petitioner was not regularised. He was temporary status casual labourer, therefore, not entitled to family pension. Accordingly, petitioner challenges non-grant of family pension, submitting interalia that she is entitled to the same in terms of judicial pronouncements based on interpretation of IREM and other Rules, Regulations and Circulars on the subject and deprivation thereof amounts to violation of Articles 14, 16, 21, 41/42 of the Constitution of India.

14. Respondents submit that husband of the petitioner was engaged as a casual labourer in 1979. He expired on 02-6-1990. He had not rendered minimum required

qualifying service for pensionary benefits. It is submitted that 50% of service rendered by a casual labourer with temporary status is considered towards qualifying service provided regularisation/absorption follows. A casual labourer with temporary status, not regularised in service before his death is not entitled to pensionary benefits, consequently, his widow is not entitled to family pension. The husband of the petitioner was not regularised/absorbed in service before his death on 02-06-1990. Even as a substitute the husband of the petitioner had not rendered minimum required qualifying service for pensionary benefits. For grant of family pension, employee should have been regularised. This case is squarely covered by Apex Court decision in Union of India v. Rabia Bikaner (AIR 1997 SC 2843) and decision in Prabhavatidevi vs. Union of India (1996(7) SCC 27) is not applicable to the facts of the case. Representations of petitioner have been decided by competent authority and demand of petitioner is not legal. CAT has decided the case in accordance with law. Ram Kumar's case (2) does not help the petitioner, therefore, petitioner is not entitled to family pension.

15. Rejoinder states that husband of the petitioner was in service from 1976 to 1990. Submission that husband of petitioner did not render sufficient qualifying service is opposed pointing out that respondents should have absorbed him, temporary Railway servant is entitled to family pension after one year of service, respondents cannot take advantage of their wrong in not absorbing her husband, Rabia Bikaner's case (supra) is not applicable, rather Mohan Lakha's case (supra) decided by the Division Bench is applicable. Rabia Bikaner's case is per incuriam, three Judge Bench decision of the Apex Court in Ram Kumar's case (2) was not brought to the notice of the Court, therefore, later judgements do not apply.

16. According to the learned counsel for the parties, the question for determination is whether the widow of a `casual labourer with temporary status' is entitled to family pension and whether position in case of `substitute' is different.

17. Shri P.H.Pathak, learned counsel for the petitioner, submits that casual labourer with temporary status is entitled to pension, so would be his widow. S/s.R.M.Vin, Mukesh A.Patel, N.S.Shevade and Ms.Megha Jani, learned counsel for the respondents, submit that casual labourer with temporary status is entitled to pension if absorbed against regular post, and half of the

service of the casual labourer after the date of grant of temporary status till the date of his absorption against regular establishment is taken into consideration for calculating the pensionary benefits on absorption in regular establishment. Casual labourer is not appointed against any post, whereas substitute is an employee against post. Petitioners did not hold permanent posts in Railways, remained casual labourers with temporary status till the age of superannuation, hence not entitled to pension, therefore, their widows would not be entitled to family pension.

18. In paragraph 11, the Apex Court in L.Robert D'Souza v The Executive Engineer, Southern Railway and another (AIR 1982 SC 854) said:

> "It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII."

Then, in paragraph 22, Court further said:

> "We would be guilty of turning a blind eye to a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily rated servant, is thoroughly opposed to the notion of socioeconomic justice and it is high time that the Railway administration brings this part of the provision of the Manual, antiquarian and antediluvian, in conformity with the Directive Principles of State Policy as enunciated in Part IV of the Constitution. It may be necessary for a big employer like the railway to employ daily rated workmen but even here it is made distinctly clear that in case of casual labour, the daily wage is fixed by dividing monthly minimum wage by 26 so as to provide a paid holiday. May be, for

seasonal employment, or for other intermittent work daily rated workmen may have to be employed. It may as well be that on projects workcharged staff may have to be employed because on the completion of the projects the staff may become surplus. That was at a time when planning and projects were foreign to the Indian economy. Today, Railways perspective plans spreading over decades. If one project is complete another has to be taken over. Railway administration has miles to go and promises to keep and this becomes clear from the fact that the appellant, a daily rated workman, continued to render continuous service for twenty years which would imply that there was work for daily rated workman everyday for twenty years at a stretch without break and yet his status did not improve and continued to be treated as daily rated casual labour whose service can be terminated at the whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socioeconomic justice are properly modified and brought in conformity with the modern concept of justice and fairplay to the lowest and lowliest in Railway administration."

19. In State of Haryana and others etc. etc. v Piara Singh and others etc. etc. (AIR 1992 SC 2130), the Apex Court said:

" So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualification, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person."

20. In Yashwant Hari Katkar vs. Union of India and others (1995 AIR SCW 380), the Apex Court in case of a person who was not made permanent even after service of eighteen and half years, said:

"It would be travesty of justice if the applicant is denied pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades, it would be unfair to treat him temporary/quasi-permanent. Keeping in view the facts and circumstances of this case, we hold that the appellant shall be deemed to have become permanent after he served the Government for a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits."

21. In Jacob M.Puthuparamboil and others vs. Kerala State Water Authority and others (AIR 1990 SC 2228) the Apex Court said that employees appointed by way of stopgap arrangement and continued for more than two years possessing requisite qualifications become entitled to regularisation and should be regularised.

22. There are catena of decisions (State of Kerala and others vs. M.Padmanabhan Nair : AIR 1985 SC 356 and Kerala State Road Transport Corpn. vs. K.O. Varghese and others : 2003 AIR SCW 2847) by the Apex Court holding that pension and gratuity are no longer bounty to be distributed by the Government to its employees on retirement, but are valuable rights and property. Right to pension has been elevated to the status of fundamental right under Art.21 of the Constitution. Therefore, employer cannot deny pensionary rights and statutory provisions construed liberally and pragmatically in the context of Art.41 and 42 of the Constitution.

23. Having noticed the spirit running through these pronouncements of Apex Court, we arrive nearer to the issue in question. The Railways framed a Scheme for casual labour and sought approval in Inder Pal Yadav v. Union of India (1985.2 SCC 648). Desai J. speaking for the Court observed in paragraph 1 that:

"Articles 41 and 42 of the Constitution notwithstanding, there are certain grey areas where the rule of hire and fire, a legacy of laissez-faire, even in Government employment still rules the roost. Casual labour employed on projects also known as `projects casual labour' is one such segment of employment where one may serve for years and remain a daily rated worker without a weekly off, without any security of service, without the protection of equal pay for

equal work. In short at the sweet will and mercy of the local satraps. Even the formidable railwaymen's unions least cared for these helpless and hapless workmen. Suddenly a torrent of writ petitions and petitions for special leave awakened this Court to the plight of these workmen. In quick succession, 48 writ petitions and 32 petitions for special leave flooded this Court. In each writ petition / Special Leave Petition, the grievance was that even though the workmen styled as 'project casual labour' had put in continuous service for years on end to wit ranging from 1974 till 1983, yet their services were terminated with impunity under the specious plea that the project on which they were employed has been wound up on its completion and their services were no more needed. No one is unaware of the fact that Railway Ministry has a perspective plan spreading over years say decades and projects are waiting in queue for execution and year these workmen were shunted out (to use a cliche from the railway vocabulary) without any chance of being re-employed. Some of them rushed to the court and obtained interim relief. Some were not so fortunate. At one stage some of these petitions were set down for final hearing and the judgment was reserved. When some other similar matters came up, Mr. K.G. Bhagat, the then learned Additional Solicitor General, requested the Court not to render the judgment because he would take up the matter with the Railway Ministry to find a just and humane solution affecting the livelihood of these unfortunate workmen. As the future of lakhs of workmen going under the label of casual project labour was likely to be affected, we repeatedly adjourned these matters to enable the Railway Ministry to work out a scientific scheme."

24. The Railways circulated the Scheme amongst others through all the General Managers of Indian Railways, including Production Unit, as per its Circular No.E(NG)II/84/CL/41 dated 1st June, 1984. Paragraph 3 of the judgment refers to the Scheme, the same is quoted:-

"5.1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as `project casual labourer') may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided

further as under:

(a) These orders will cover:

(i) Casual labour on projects who are in service as on January 1, 1984; and

(ii) Casual labour on projects who, though not in service on January 1, 1984, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows.)

(b) The decision should be implemented in phases according to the schedule given below:

Length of service (i.e.continuous employment)	Date from which decision should be implemented	Date by which treated as temporary
(i) Those who have completed five years of service as on 1.1.84	1.1.1984	31.12.1984
(ii) Those who have completed three years but less than five years of service as on 1.1.1984	1.1.1985	31.12.1985
(iii) Those who have completed 360 days but less than three years of service on 1.1.1984	1.1.1986	31.12.1986
(iv) Those who complete 360 days after the date on 1.1.1984 which 360 days are completed whichever is later.	1.1.1987 or 31.3.1987	

5.2. The Ministry would like to clarify here that casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits now admissible to them (so long as they fulfil the conditions in this regard) till they become due for the

benefits mentioned in the preceding sub-paragraph."

25. The Apex Court modified the date in paragraph 5.1(a)(i) from January 1, 1984 to January 1, 1981. With this modification, and consequent rescheduling in absorption from that date onwards, the Scheme framed by Railway Ministry was accepted and directive given to implement the same by recasting the stages consistent with the change in the date, as directed. This judgment is pronounced on April 19, 1985. Railway Board's letter dated 1st June, 1984 referred to above in paragraph 5.1 conveys:

"As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as `project casual labour') may be treated as temporary on completion of 360 days continuous employment. ..... (emphasis supplied)
xx xx xx"

26. The Scheme framed and placed before the Apex Court, therefore, conveyed that on completion of 360 days continuous employment, casual labour is treated as `temporary'. The Scheme does not convey that on completion of 360 days' continuous employment, casual labour will get `temporary status'. In the original Scheme, there is no discussion or mention about `temporary status', but it clearly conveys that casual labour after completion of 360 days of continuous employment are treated `temporary'. Thereafter, the Government of India, Ministry of Transport, Department of Railways, issued Circular dated 11th September 1986. While making reference to Ministry of Railways/Department of Railways letters of even number dated 1st June 1984 and 25th June 1984 on the subject in the Circular for the first time, Railways have committed clear mischief by incorporating the word `status' succeeding `temporary', making out expression `temporary status'. Paragraphs 3 and 4 of this Circular are quoted:

"3. Keeping in view the direction given by the Supreme Court in the said judgment and in their orders dated 11.8.86 (copy enclosed) para 5.1 of the aforesaid letter of 1.6.84 should be substituted by the following, the other provisions of the same remaining unaltered:

`5.1 As a result of such deliberations, the

Ministry of Railways have now decided in principle that casual labour employed on projects (also known as "Project casual labour") may be treated as temporary (temporary status) on completion of 360 days of continuous employment. The Ministry have decided further as under:-

(a) These orders will cover :-

(i) Casual labour on projects who were in service as on 1.1.1981; and

(ii) Casual labour on projects who though not in service on 1.1.1981 had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

(b) The decision should be implemented in a phase manner according to the schedule given below:-

Length of service (i.e. continuous employment)	Date from which may be treated as temporary (temporary status)
(i) Those who have completed five years of service as on 1.1.1981	1.1.1981
(ii) Those who have completed 3 years but less than 5 years of service as on 1.1.1981	1.1.1982
(iii) Those who have completed 360 days but less than 3 years of service as on 1.1.1981	1.1.1983
(iv) Those who complete	1.1.1984 or the

360 days after date on which 360
1.1.1981 days are completed
whichever is
later.'

4. Accordingly, in paras 1 and 2 of the Ministry of Railways letter dated 25.6.84, the date "1.1.84" may be read as "1.1.81". The dates occurring in hypothetical illustrations given in para 3 thereof would stand modified correspondingly."

27. Therefore, Railways committed the change in the original Scheme approved by the Apex Court by attributing `temporary status' instead of `temporary' to casual labour on completion of 360 days of continuous employment. This change is, ex-facie, contrary to Apex Court's decision in Inder Pal Yadav case, therefore, illegal and non-est. In Dakshin Railway Employees Trivandrum Division v. General Manager, Southern Railway and others :JT 1987(1) SC 531), decided on February 23, 1987, the Apex Court incorporated the original Scheme, whereby casual labour after completion of 360 days continuous employment are treated `temporary'. With a view to highlight the mischief played by the Railways, it is necessary to quote the judgment to the extent it is relevant:

"1. A Division Bench of this Court consisting of Desai and Ranganath Misra, JJ. gave certain directions in INDER PAL YADAV & ORS V. UNION OF INDIA & ORS. 1985 (2) SCC 648, modifying a scheme prepared by the Railway Administration for the purpose of absorbing 'retrenched Railway Casual Labour'. Incorporating the directions of the Court, the Railway Board issued a circular to the General Manages of all Indian Railways, para 5.1 of which is relevant and is as follows:

`5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as "Project casual labour") may be treated as temporary (temporary status) on completion of 360 days of continuous employment. The Ministry have decided further as under:-

(a) These orders will cover :-

(i) Casual labour on projects who were in service as on 1.1.1981; and

(ii) Casual labour on projects who, though not in service on 1.1.1981 had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

(b) The decision should be implemented in a phase manner according to the schedule given below:-

Length of service (i.e. continuous employment)	Date from which may be treated as temporary.
(i) Those who have completed five years of service as on 1.1.1981	1.1.1981
(ii) Those who have completed 3 years but less than 5 years of service as on 1.1.1981	1.1.1982
(iii) Those who have completed 360 days but less than 3 years of service as on 1.1.1981	1.1.1983
(iv) Those who complete 360 days after 1.1.1981	1.1.1984 date on which 360 days are completed whichever is late."

2. The petitioners before us who are 149 in number claim that they are entitled on the benefits of the modified scheme and they pray that they should be forthwith taken back into employment. The Railway Administration admits that 84 of the petitioners are entitled to the benefits of the scheme as they were in employment

on January 1, 1981 and that the remaining 65 petitioners are not entitled to the benefits of the scheme as they were not in service on January 1, 1981 having been retrenched sometime prior to that date. The contention of the Railway Administration is clearly wrong in view of the express provision in paragraph 5.1(a)(ii) that "these orders will cover casual labour on projects, who, though not in service on January 1, 1981, had been in service on Railway earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after January 1, 1981." A direction will, therefore, issue to the respondents to include the petitioners in the scheme for absorption as formulated pursuant to the directions of the court.

28. From perusal of Dakshin Railway Employees judgment, it is clear that Railways did not bring to the notice of the Apex Court its Circular dated 11th September 1986, whereby it had deviated from the Apex Court decision in Inder Pal Yadav case (supra) from treating casual labour "temporary" on completion of 360 days continuous employment to "temporary status". By making this change, Railways seek to create one more category of labour, namely `casual labour with temporary status', otherwise, there were only categories of casual labour, temporary, permanent and substitute. By this change, `casual labour' becomes `casual labour with temporary status' and not `temporary railway servant'. Surprising it is, that this mischief and change was not brought to the notice of the Apex Court, instead the original scheme was placed before the Apex Court. The Railways issued a Circular to work out the scheme for casual labour dated June 23, 1984 and June 25, 1994. The relevant part of both these Circulars is quoted:-

" (F.(E) III-82 II/1. dated 23.6.1984) Project Casual Labour Terms of employment of.

"It may be observed from the provisions of para 5.1 of Ministry of Railway letter No. E (NG) II 84/CL/41 dated 1.6.84 that the benefit of being treated as temporary will be admissible also to project casual labour who, though not in service as casual labour on Railways on 11,1984 had been in the employ of the Railway prior to 1.1.84 and

have been reengaged after that date (1.1.19 4). The date from which the benefit will be admissible to them will be the same as in the case of project labour in service on the Railways on 1st January, 1984.

The position in this regard would be clear from the hypothetical illustrations given below;

(i) "A" was engaged as project labourer on the Railways prior to 31.12.1983 His services were terminated say on 31.8.83 on completion of work. On availability of fresh work he was reengaged as project casual labour on 1.3.84 and continues to work as such. Thus A was not in the employ of the Railways on 1.1.84. At the time of his discharge on 31.8.83, he had been in 'continuous employment' for say two years. The case of 'A' will fall under sub item (iii) in para 5.1(b)) of the letter of 1st June 1984. Thus, 'A' will be treated as temporary from 1.1.86.

(ii) 'B' was engaged as project casual labour prior to 31.12.83. His services were terminated on 30.6.83 due to completion of work or for want of other productive work. At that time, he had to his credit continuous employment of three years and 3 months. If 'B' is reengaged as project casual labour on availability of fresh work, on say, 1st April 1984 and continues to work as such. his case will fall under sub item (ii) of para 5.1 (b) ibid. Thus, he will be entitled treated as temporary from 1st January, '83.

(iii) 'C' was working as project casual labour prior to 31.12.83. He was discharged say on 31.11.83 after putting in 300 days of 'continuous employment. If he is reengaged as project casual labour say from 1st June 1984 and puts in continuous service thereafter, he will be entitled to be treated as temporary from 1.1.87 as his case will come under sub item (iv) of para 5.1 (b) of the letter of 1st June 1984.

4. It is reiterated that for purpose of applicability of the provisions of the letter of 1.6.84 the employment as casual labour should be continuous employment as defined in the orders on the subject issued from time to time.

(E (NG)II/84/CL/41`dated 25.6.1984)"

29. Railway Establishment Manual (2511) envisages rights and privileges admissible to casual labour who are treated as `temporary' after completion of six months' service. In this also, casual labour is treated as `temporary' and there is no mention of `temporary status' in Clause (a) of the Rule. Railway Establishment Manual Chapter XXIII deals with terms and conditions applicable to Railway servants and Substitutes in temporary service - Section (A) Non Gazetted Staff (1) Temporary Railway Servants (2301):

"Definition - A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", "a `contract' or `part-time' employee" or an "apprentice".

30. In the above definition `casual labour with temporary status' is not included, which means, only casual labour is not `temporary railway servant'. The definition of "casual labour" is given in Chapter XXV, which reads:-

"2501 - Definition :- (a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short period. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour."

31. After two decisions of the Apex Court, one in Inder Pal Yadav and the other in Writ Petition (Civil) No.332 of 1986 (Dakshin Railway Employees Trivandrum Division v. General Manager, Southern Railway & Ors. JT 1987(1) SC 531), the change has been made in definition of "temporary railway servants" in Chapter-XV (Vol.1 Revised Edition 1989, pg 168) and in the terms and conditions applicable to the Railway servants and Substitutes in temporary service, non-gazetted staff (1501) as under:

"(i) Temporary Railway Servants:
Definition A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does

not include "casual labour", including "casual labour with temporary status", a "contract" or "part-time" employee or an "apprentice".

32. This change has been made by Railways after the Apex Court decision in Inder Pal Yadav case (supra). The original definition `temporary railway servant' is clear, but in the above quoted definition in Clause (1501), Railways have included the `casual labour with temporary status', thereby, taking them out from the category of "temporary railway servant". How and why this change has been made, what procedures were adopted for making the change, there is no whisper, although, this change has grievously affected the casual labour becoming temporary on completion of 360 days continuous employment, and committed breach of the Apex Court's decisions in Inder Pal Yadav case (supra) followed by Dakshin Railway Employees case (supra), making casual labour `temporary railway servant'. Since there exists only four categories, namely, (1) permanent, (2) temporary (3) casual labour and (4) substitutes, casual labour, under the original scheme approved in cases referred to hereinbefore, becomes `temporary railway servant', after completion of 360 days' continuous employment, therefore, he cannot be made `casual labour with temporary status' by subsequent gerrymendering by the Railways by its Circular dated 11th September 1986, which was not brought to the notice of the Apex Court in Dakshin Railway Employees case (supra). Therefore, this Circular has no legal sanction, against the Apex Court decisions in Inder Pal Yadav case (supra), contrary to original scheme and as such, hit by Articles 14, 16, 21, 41/42 of the Constitution of India.

33. Apex Court decision in Ram Kumar v. Union of India and ors. - Review (AIR 1996.1 SLJ 116) dated September 6, 1990 by the three Judge Bench demonstrates quite plainly that Ram Kumar and others vs. Union of India and others (1988.1 SCC 306) was decided only on the statement of Additional Solicitor General and the material then placed before the Court, thereby excluding and depriving the `temporary railway servant' and `casual labour acquiring temporary status' from retiral benefit of pension. Therefore, the necessity for reconsideration by the Larger Bench holding that:

"The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission report has provided for pension at the time of superannuation even to those who are

> temporary employees. In paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obliviously appropriate material had not been placed before this Court when the submission of Mr.Ramaswamy for Railway administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented."

34. The petitioners before the Apex Court were casual labour, therefore, there is no manner of doubt that Apex Court decision in Ram Kumar (Review) case (supra) pertains to this category. The dispute was about this category, otherwise, there is no dispute about entitlement of `temporary railway servant' availing the retiral benefit of pension. The Board's decision dated April 15, 1987 applies to all railway employees governed by the Manual of Railway Pension Rules 1950. By this order, recommendations of the Fourth Central Pay Commission were accepted and consequential changes made to Rule 801(18) in the Manual of Railway Pension Rules, 1950, granting pensionary benefits to temporary railway servants. It is quoted to the extent of relevance:

> "(18) This section is not applicable to -
> (a) to (c) xx xx xx
> (d) casual/daily-rated employees and casual employees treated as temporary staff until they are absorbed against regular permanent/temporary posts;
> (e) xx xx"

35. Clause 11 (DEATH BENEFITS) of Railway Board's order No.PC-IV/87/Imp/PN/1 dated 15-4-1987 provides that in the event of death in harness of temporary Railway servants, their families shall be eligible to family Pension and Death Gratuity on the same scale as admissible to families of permanent Railway servants under the Manual of Railway Pension Rules, 1950. This is a modification to the Manual of Railway Pension Rules, 1950. These provisions were specifically modified by the aforesaid order, therefore, they remain unaffected. Moreover, looking to Chapter I, Section 101, Sub-section

(2) and Chapter VIII, Family Pension, Section 801, read with Sub-section 18 of Manual of Railway Pension Rules, 1950, wherein it is provided that this Section is not applicable to casual/daily rated employees and casual employees treated as temporary staff until they are absorbed against regular/permanent/temporary posts, it becomes clear that it was modified because of Board's decision dated April 15, 1987, therefore, temporary railway servant is entitled to benefit of pension on superannuation, and in case of death, his widow is entitled to family pension. The Railway Services (Pension) Rules, 1993, defines `railway servant' in Section 2(23) as under:

> "(23) "railway servant" means a person who is a member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour or person lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control"

36. Looking to the above definition, Pension Rules, 1993, also do not exclude `temporary railway servant' from being eligible to draw pension, but only excludes casual labour, therefore, even under the Pension Rules, 1993, `temporary railway servant' is entitled to get benefit of pension.

37. In the definition of `temporary railway servant' given in Indian Railway Establishment Manual, Vol.1 (Revised Edition), 1989, Railway Administration made change and included `casual labour with temporary status', which was not included in earlier definition of `temporary railway servant'. This change is based on Railway Administration Circular dated 11th September, 1986, which is contrary to the Apex Court decision in Inder Pal Yadav case (supra). Under Indian Railway Establishment Code, Volume 1, Fifth Edition - 1985, definition of `the railway servant' in Section 103(43) excludes `casual labour' only and not `casual labour with temporary status'. `Casual labourer' becomes `temporary railway servant' on completion of 360 days continuous employment as per Apex Court decision in Inder Pal Yadav's case (supra) approving the Railway Scheme of Absorption to this effect. Subsequent change of `temporary railway servant' by Railways to `casual labour with temporary status' is the creation of Circular dated

September 11, 1986, which lacks legal sanction. As per Apex Court decision in Ram Kumar (Review) case (supra) dated April 19, 1987, `temporary railway servant' is entitled to pensionary benefits. This is provided in Manual of Railway Pension Rules, 1950 on acceptance of IVth Pay Commission recommendations by the Railways. Having obtained the approval of the Apex Court in Inder Pal Yadav's case (supra) absorbing `casual labour' as `temporary railway servant' and on reiteration of the same position in Dakshin Railway Employees's case (supra), no change in the position of casual labour could be there without sanction of the Court. Railways could not have deprived `casual labourer' acquiring the status of `temporary railway servant' on completion of 360 days continuous employment from pensionary benefits by changing their status from `temporary railway servant' to `casual labour with temporary status'. Full Bench decision of Central Administrative Tribunal, Cuttak, dated 11th October, 2001, does not take into account the Apex Court's decision in Ram Kumar (Review) case (supra), Inder Pal Yadav case (supra), the Circulars dated June 1, 1984 read with June 25, 1984 by Railway Administration and also the Railway Board's decision dated April 15, 1987. The decision was based on Union of India vs. Rabia Bikaner, etc. (AIR 1997 SC 2843) in which, decision in Ram Kumar (Review) case was not considered. Before the Apex Court, decisions in Inder Pal Yadav case (supra), Dakshin Railway Employees case (supra) and Ram Kumar (Review) case (supra) were not placed for consideration, therefore, Central Administrative Tribunal deviated from its earlier view, in large number of cases, that widow of railway employee with temporary status was entitled to family pension, relying on Rabia Bikaner's case (supra). The Tribunal had been taking the stand that widow of a railway servant is entitled to pension till decision of Rabia Bikaner. For example, Mr. Mohanbhai Lakhabhai v Union of India and others (O.A.No.419/00) decided on 31-07-2002. This decision was subject matter of challenge in Union of India v. Mohanbhai Lakhabhai (S.C.A.No.6164/03). Division Bench by decision dated 05-05-2003, confirmed the decision of the Central Administrative Tribunal. (Also see Union of India v. Devshi Valjibhai :S.C.A.No.12298/02 decided on 21-01-2003, Union of India v Alena Loyal, since deceased through his legal heir : S.C.A No.1595/02 decided on 24-04-2003).

38. With regard to substitutes, we may quote Rules 1512, 1513, 1514 and 1515 (Chapter XV, Terms and Conditions Applicable to Railway Servants and Substitutes in Temporary Service) of Indian Railway Establishment

Manual, Vol.I, (Revised Edition-1989):

"1512. Definition.- "Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

1513. Circumstances under which substitutes can be recruited :-

(i) Ordinarily there should be no occasion to engage "substitutes" having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.

(ii) As far as possible Substitutes should be drawn from a panel of suitable candidates selected from Group `C' and `D' posts and should be engaged subject to the observations made in (i) above, only in the following circumstances :-

(a) Against regular vacancies of unskilled and other categories of Group D' staff requiring replacement for which arrangements cannot be made within the existing leave reserve.

(b) Against a chain vacancy in the lower category of Group `D' staff arising out of the incumbent in a higher Group `D' category being on leave, where it is not possible to fill the post from within the existing leave reserve.

(c) Against posts in categories for which no leave reserve has been provided.

(d) Against vacancies in other circumstances notified by the Railway Board from time to time.

1514. Emoluments payable to the Substitutes. Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the

vacancy.

1515. Rights and privileges admissible to the Substitutes. - Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

xx xx xx xx"

39. In the backdrop of these circumstances and the submissions advanced for our consideration, the irresistible and legitimate conclusion is that when casual labourer has served for requisite period continuously, he has to be treated temporary, in other words, he is a `temporary railway servant'. This is incidence of statutory provisions and judicial pronouncements. Having acquired this status, he is entitled to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension. Regularisation against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do not depend on regularisation/confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee. Describing of an employee `casual/temporary status' and depriving him pension and his/her widow/widower family pension amounts to negation of his statutory and Constitutional rights under Articles 14, 16, 21, 41/42. Therefore, having become `temporary railway employee', he should be considered for appointment against permanent post along with colleagues as per seniority in the Department, which, he is deemed to be appointed against the available post. Circular dated September 11, 1986 is against decision of Apex Court in Inder Pal Yadav case (supra), therefore, illegal, and cannot be given effect to by the Railways changing the position of `casual labour' from `temporary casual labour' to `casual labour with temporary status'.

40. Substitutes, if absorbed against regular posts, would be entitled to pensionary benefits. In case they

were holding temporary status before appointment as substitutes, they shall be treated `temporary railway servants'. The period spent by them as casual labour, before appointment as substitute, shall be counted for acquiring status of `temporary railway servant', thereby, becoming at par with other temporary railway servants for pensionary benefits and his widow to family pension. The contentions advanced by learned counsel for the petitioners are accepted and those of the respondents rejected. The casual workers attain the status of `temporary railway servant' and are further entitled to regularisation against available posts as per seniority, however, non-regularisation against permanent posts would not deprive them of retiral pension. Their widows/widowers, on his/her demise, whether during service or after superannuation, would be entitled to family pension, same would be the position of substitute, in the circumstances discussed above.

42. No other point was urged by the parties.

Accordingly, all the Petitions are allowed in terms aforesaid. Respondents are directed to pay family pension to the petitioners from the date of death of the concerned employee within a period of two months. Parties shall bear their own costs. Rule is made absolute.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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